

Town of Bolton
ZONING BOARD OF APPEALS
MINUTES
Tuesday, August 17, 2021
6:00 p.m.

SEQR = State Environmental Quality Review
PB = (Town of Bolton) Planning Board
WCPS = Warren County Planning Staff
APA = Adirondack Park Agency
LGPC = Lake George Park Commission
DEC = Dept. of Environmental Conservation

Present: Jason Saris, Brendan Murnane, Holly Dansbury, Joy Barcome, Jim Senese, Alternate; Lorraine Lefevre, Jeff Anthony, Dan Sheridan, Planning & Zoning Director; Richard Miller, PE and Counsel; Michael Muller

Absent:

The meeting was called to order at 6:00pm.

Jason Saris asked if there were any changes or corrections to the July 20, 2021 minutes.

RESOLUTION:

Motion by Holly Dansbury to approve the July 20, 2021 minutes **Seconded by** Joy Barcome. Dan Sheridan abstained. **All others in Favor. Motion Carried.**

- 1. V21-19 Arthur Harris:** Represented by John Harris. Seeking area variances for 1) subdividing a 1.15 acre lot into two equal undersized lots of 0.57 acres in RCL3 zone requiring 1 acre lots, 2) side setback, 30 feet is required, 22.5 feet is requested, 3) waterfront variance, 175 feet is required, 100 feet is requested and 4) to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 157.05, Block 1, Lot 3, Zone RCL3. Property Location 35 & 37 Horicon Lane. Subject to LWRP review.

Randy Harris presented the following:

- The Town Atty. recommended that this item be tabled at the last meeting to get a recommendation from the Planning Board.
- The Planning Board recommended that an iron clad maintenance agreement between the two property owners be submitted and approved by the Town Attorney.
- In short, they are here to have the Board help them to draw a line on the map so they can stay on Horicon Lane.
- There are two houses which are individually owned sitting on one piece of jointly owned property.
- The situation arises from a purchase in 1972 that predates the zoning code, at which time, multiple families purchased a piece of property that contained multiple summer dwellings.

- There are now only 2 homes on the property that were built in 1992.
- Earlier this year, the second cabin homeowners decided to sell their share of the property.
- She and her husband scrambled to buy by borrowing from their retirement, because the agreement they had was that they had 90 days to buy the other party out or the whole property would have to go up for sale.
- They did this because they did not want to be forced to leave the place their family has been enjoying for the past 50 years.
- They did it order to buy some time to allow them to subdivide the two properties so that each structure could be individually financed and correct a pre-zoning anomaly.
- They are only requesting variances for what already exists so that it can be sold.

Jason Saris asked if the maintenance documents requested by the Planning Board had been reviewed by and met the Town Attorneys approval. Atty. Muller replied that they did, and he recommends that they condition it so that the maintenance is to be recorded.

Jason Saris asked if the density was changing on the site at all. Ms. Harris replied no.

RESOLUTION

The Zoning Board of Appeals received an application from Joseph and John Harris (V21-19) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, whereas the Warren County Planning Staff determined that there was No County Impact.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item #1 of the agenda.

- 1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. These are two non-conforming, pre-existing structures on one property with this being the only way to make this property sellable for both parties.
- 2) There will be no undesirable change in the neighborhood character or to nearby properties. This will not change the neighborhood at all.
- 3) The request is not substantial.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. There will be no change to what already exists here.
- 5) The alleged difficulty is not self-created. They are just adding a property line to a pre-existing non-conforming lot.

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Brendan Murnane and seconded by James Senese, it is resolved that the ZBA does hereby approve the variance request as presented with the following condition: 1) The maintenance agreement must be recorded at the County. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

2. **V21-20 Rossi:** Represented by Joseph and Jill Rossi. Seeking area variance to alter a non-conforming structure in accordance with Section 200-57B(1)b. Section 171.15, Block 3, Lot 13, Zone GB5000. Property Location 10 Honda Loop. Subject to LWRP review.

The Board discussed what they would like to see to make the application complete with Atty. Muller.

Jason Saris suggested that moving forward, the Director of Planning and Zoning be very specific in what variances were being requested on the agenda so the Board would know exactly what relief the applicant was looking for.

Now, upon motion duly made by Holly Dansbury and seconded by Dan Sheridan, it is resolved that the ZBA does hereby table the variance request for additional information. **All in favor. Motion Carried.**

3. **V21-21 Moore:** Represented by John Lapper or Michael Moore. Seeking area variances for installation of a pool and associated deck 1) side setback, 15 feet is required, 10 feet is requested and 2) waterfront variance, 75 feet is required, 35 feet is requested. Section 171.08, Block 1, Lot 14, Zone RCM1.3. Property Location 10 Braley Point Road. Subject to APA and LWRP review.

Atty. John Lapper presented the following:

- They bought the property in 2018 and would like to add a pool.
- The lot is constrained due to a large septic system that serves this and another property.
- There will be no impact to the stream.
- There is no better place to put the pool that meets the setback.
- The practical difficulty is that due to the constraints on the lot this is the only area to place the pool.

Jason Saris asked if the pool would be at grade. Atty Lapper replied yes.

Jason Saris inquired about the pergola and why it was not included in the write up. Atty. Lapper stated it was on the deck, and he though this was part of the 15' variance. Atty. Muller stated he believed the applicant could add it to this variance request now.

Chris Navitsky, Lake George Waterkeeper read his letter stating he had concerns with the protection of the stream, especially in light of the shoreline setback requirement and the recent stream corridor protection regulations adopted by the Lake George Park Commission for all streams within the Lake George watershed. These regulations require a 35-foot protection buffer along all streams with allowances for access and small paved areas (100 sf impervious or 400 sf permeable pavers). There is also concern with the increased runoff from the large impervious patio and the lack of stormwater management since the Braley Hill tributary has washed out the downstream culvert in previous years resulting in sediment discharge to Lake George. It is his opinion that a greater shoreline setback for the pool should be provided, and alternatives do exist, such as relocation of the septic tank. He recommends the Zoning Board of Appeals table the application and require the applicant to investigate alternatives to increase the shoreline setback to protect the stream and increase stormwater management practices.

Atty. Lapper stated the proposal does call for plantings along the stream and because of the nature of the pool, if it needed to be drained or backwashed, they could drain it toward the field and away from the stream. He believes Mr. Navitsky's concerns are a bit overblown as it is very small area of impervious near the stream.

Holly Dansbury asked about the grading and runoff concerns. Atty. Lapper stated the grade would be the same as exists and the impervious was a small area around the pool. Holly Dansbury said it looks as though it is pretty far away from the stream on a big wide open area.

Jason Saris asked what the construction detail of the deck was. Atty. Lapper stated that he did not have that information, he assumed it was pavers or concrete. Jason Saris said he was wondering if it could be made more pervious.

RESOLUTION

The Zoning Board of Appeals received an application from Moore (V21-21) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, whereas the Warren County Planning Staff determined that there was No County Impact.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item #3 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. As explained, due to the current septic system, this is the only area in which to locate the pool.

- 2) There will be no undesirable change in the neighborhood character or to nearby properties.
- 3) The request is not substantial.
- 4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. If any pumping is done it will be away from the stream.
- 5) The alleged difficulty is self-created. This is basically the only location to place the pool. The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Holly Dansbury and seconded by Danny Sheridan., it is resolved that the ZBA does hereby approve the variance request as presented with the addition of the pergola and the following condition: The pool is to be pumped away from the stream if pumping is needed. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. **All in favor. Motion Carried.**

4. **V21-22 528 Third Ave Partners:** Represented by Studio A. Seeking area variances for two townhouse buildings, one with four townhouse units (Building A) and one with two townhouse units (Building B). Requested Variances are as follows:
 1. Overall density on the site for Buildings A and B: 1 principal building is allowed on the 0.69 acre site, 6 principal buildings (4 in Building A and 2 in Building B) are proposed;
 2. Overall percent building cover on the site for Buildings A and B; 15% is allowed, 20.1% is proposed;
 3. Overall setbacks for Building A – front setback 50 feet is allowed, 4 feet is proposed; side setback 20 feet is allowed, 12 feet is proposed; shoreline setback 75 feet is allowed, 54 feet is proposed;
 4. Overall setbacks for Building B – side setback 20 feet allowed, 8 feet is proposed; shoreline setback 75 feet is allowed, 0 feet is proposed;
 5. Individual units in Building A
 - a. Unit A-1 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.
 - b. Unit A-2 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.
 - c. Unit A-3 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot

width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.

- d. Unit A-4 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.

6. Individual units in Building B

- a. Unit B-5 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.
- b. Unit B-6 – Minimum lot area 1 acre (43,560SF) is required, 1080SF is proposed; Front setback 50 feet is allowed, 0 feet is proposed; side setbacks (each side) 20 feet is allowed, 0 feet is proposed; rear setback 20 feet is allowed, 0 feet is proposed; percent building cover 15% is allowed, 100% is proposed; Minimum lot width 125 feet is required, 24 feet is proposed; and minimum lot depth 150 feet is required, 45 feet is proposed.

Section 171.19, Block 1, Lot 75, Zone RM1.3. Property Location 25 Goodman Avenue. Subject to LWRP review.

Now, upon motion duly made by Brendan Murnane and seconded by Dan Sheridan, it is resolved that the ZBA does hereby table the variance at the applicant's request. **All in favor. Motion Carried.**

5. **V21-23 Green Island LG, LLC**: V21-23 Green Island LG, LLC: Represented by Studio A. Seeking area variance to allow construction of four U-Shaped docks with boat houses. Requested area variances are as follows: 1) 1 dock is allowed on the lot, 4 additional U-Shape docks are proposed, 2) boathouses are not allowed, boathouses on the 4 additional U-Shaped docks are proposed. Section 171.12, Block 1, Lot 1¹, Zone PUD. Property Location North Island Road. Subject to APA and LWRP review.

¹ Note: Parcel 171.12-1-1 is incorrectly referred to in the PUD legislation as a 4.0 acre lot, it is actually 3.34 acres in size.

Jeff Anthony recused himself.

Atty. Lapper presented the following:

- This project will require a LGPC permit, but they will not review it until after the town has.
- There is language in the zoning code that allows the Zoning Board to grant variances to

a PUD. Atty. Muller agreed and read this section to the Board. He explained the difference between an amendment and a variance to a PUD.

Jason Saris asked about the Town's jurisdiction over the water. Atty. Muller said they don't have jurisdiction over the water however they do have jurisdiction over the area in the PUD and this is a condition of the PUD. Jason Saris asked how the PUD could have jurisdiction over something that the Town has no Jurisdiction over. Atty. Muller said it is his view that the early PUD was created and predates the case that definitively decided who has jurisdiction at the line. The courts have decided that at the shoreline the State of New York has exclusive jurisdiction as well as above and below the surface of the water. The local code controls from the shoreline back to the land. The creation of this PUD predates this definitive decision. The applicant is here to amend this condition of only one boathouse for this property. The APA has decided this is non jurisdictional. The applicant has now come to the town asking to put the docks where they are presently prohibited by the PUD. There are two schools of thought on this, one is to amend the PUD which this is not. This is a request to vary the restriction.

Jason Saris asked if anyone knew what the rational was for putting these restrictions on this PUD. Atty. Lapper said it was his understanding that it was just 1 house with 1 wharf structure, but this was 40 years ago.

Holly Dansbury asked if the Board had a previous request for a dock on Green Island. Jeff Anthony stated that applicant who requested that was Struzzieri, and it was an application for a dock on the east side of the island. When they came to the Board, they were looking for an amendment to the PUD, and were denied by the Planning Board, but what they are looking at here is a variance to the PUD. Jason Saris stated he would think that a lot of the creation of the PUD focused on the commercial aspect of things, and he doubted that a lot of attention and thought was given to the more residential type considerations.

Zandy Gabriels said he remembers that the two homes at the end of the island were part and parcel of the Sagamore PUD development. He remembers the discussion about the one piece of property that spanned both sides of the end of the island which doubled its waterfront acreage, and it was still decided it should only be allowed to have one dock. The town was smart then in limiting only one boathouse per lot in the development of the PUD and they should be smart now.

Atty. Lapper handed out packets of the visuals of the boathouses on the lake to the Board and detailed them. In terms of justification for the variance standards, there is 1,680 linear feet of shore frontage which would allow 11 wharf structures under the LGPC rules for footage required per structure which is way more than 4 they are requesting. This is all facing the protected harbor area away from the main lake. There are lots of docks and marinas existing here and it is in a 5 mile per hour zone. This is a large family compound with many boats, and it would be helpful to not have to launch them every time they want to use them. There will not be an impact on boat traffic, there are marinas on the opposite shoreline and this request is not out of character with what presently exists in this area. This will be a convenience for the family with very minimal impact on the lake. They are asking for a variance to allow them to go to the next step, which is the LGPC, to ask for permits. There doesn't seem to be a good

reason why a quiet end on the north side shouldn't be allowed to have a few private docks.

Jason Saris asked about the other boathouses on the lake in that area under the PUD and if they were allowed. Zandy Gabriels stated that a decision was made for 1 boathouse per residence there.

Holly Dansbury said if they approved this it would run with the land and it is a rather substantial request for docking for one single residence. Jason Saris said it is not just asking for docks; it is asking for docks and 4 boathouses. Holly Dansbury said she it seemed to scream major development down the road with that many docks. Atty. Lapper said in anticipation of that comment they would offer that it would not become a marina but would remain for the private use of that family compound. Jason Saris inquired as to why they would need boathouses on all the docks. Atty. Lapper replied because they had a whole bunch of wooden boats that they wanted to keep covered.

Lorraine Lefevre asked if they would be able to rent dock spaces if they were not being used by the applicant. Atty. Lapper stated that they would stipulate that this would not be allowed. They were not looking to do this.

Chris Navitsky said they are claiming that they have 1,600 linear feet of shoreline, but if they are not allowed to use the east side, they should have to subtract this footage out of what they are using for calculating what they can have, which would reduce the amount of docks they are claiming they are allowed. He said this is an extremely congested area and he would suggest that they seek a recommendation from the LGPC on their recreational study, which claims this is a very congested bay, before they make a decision. These boathouses are proposed to be outside the 5mph area. He believes this is a substantial leap from 1 allowable dock to 4. He cited the note number 4 on the conditions stating no land disturbance or vegetative cutting/thinning can occur, so they can't even clear to put these docks in.

Francis Conroy stated that he thought it was up to the LGPC to issue a marina license and decide whether these docks could be rented and used as marina not this Board. Atty. Lapper stated he was just offering as a condition of this approval that the applicant would not be a commercial marina. In terms of Mr. Navitsky's remarks he believes this *is* located within the 5mph zone and the boats are going very slowly here. Also, if they reduce the allowable linear footage of shoreline the 4 boathouses would still work. The applicant would like 4 but they would be acceptable to reducing it to 3. There are no proposals to remove any trees from the shoreline. In this protective cove it does not impact anyone. These are just small wooden boathouses. This is just a large family in need of a few more boat structures.

Brendan Murnane asked if the APA had any jurisdiction on this. Atty. Muller stated that the APA had issued a non-jurisdictional letter on this which pushes it to the town and then it would go to the LGPC.

Jason Saris asked if this was granted by the Zoning Board would it need to go before the Town Board. Atty. Muller stated no, this is a variance to the PUD, not an amendment.

Holly Dansbury asked if the LGPC would be able to address the number of boathouses allowed if this Board approved this modification to the PUD or would an approval from this Board automatically allow for the 4 boathouses. Jason Saris said that by LGPC regulations already allow for the 4 boathouses according to Atty. Lapper. Atty. Lapper stated they would need a permit from the LGPC, but they would not need relief from them.

Jason Saris said when this PUD was developed, the people who developed it had some reason for adding these restrictions. Holly Dansbury stated that she would gather it was to not over develop what was being developed in the PUD. Jason Saris said it could have been, or it may have been something else. If you look at this in the terms of the guidelines, they usually use for granting a variance such as if the variance request is substantial, none are allowed, and they want 4. Can the benefit be achieved by other means? Maybe yes, maybe no, but you can certainly tie a boat up to a uncovered dock.

Holly Dansbury stated she feels that this is substantial in a heavily congested area. They try to balance what the applicant requests and what is allowed. Jason Saris said it seemed like an odd place to buy and build if they felt they needed covered storage for a large number of boats. Atty. Lapper stated it was more important to the applicant to have the boats covered than the number of boathouses if the Board wanted to cut down the number allowed.

Dan Sheridan asked about winter storage. Atty. Lapper stated he believed that they would be moved back into the garage.

Joy Barcome stated she keeps her boat in Sawmill Bay and the congestion is a little more south of where the applicant is looking.

The Board discussed the number of boathouses and discussed limiting it to 2 boathouses.

Jason Saris stated his concern is to what is substantial, and this is substantial in his mind.

Zandy Gabriels stated that the LGPC takes full jurisdiction of the boathouses and since they have, the roofs have all been essentially flat. It is his opinion that the boathouses should have peaked roofs and designed so a boat could be whip stored if desired and he also prefers full crib wooden docks, not the metal ones. He stated these were his personal observations.

Brendan Murnane stated it looked like some of this is what they are proposing in the drawings.

RESOLUTION

The Zoning Board of Appeals received an application from Green Island LG, LLC (V21-23) for an area variance as described above.

And, due to notice of the Public Hearing of the ZBA at which time the application was to be considered having been given and the application having been referred to the Warren County Planning Staff;

And, whereas the Warren County Planning Staff determined that there was No County Impact.

And, after reviewing the application and supporting documents of the same, and public comment being heard regarding the application; this Board makes the following findings of fact:

The application of the applicant is as described in Item #5 of the agenda.

1) The benefit could not be achieved by other means feasible to the applicant besides an area variance. Adding 2 more boathouses will allow the applicant plenty of boat coverage.

2) There will be no undesirable change in the neighborhood character or to nearby properties. This is already congested area, and this will not effect the overall area.

3) The request is substantial. The requested variance is substantial, but the reduced amount is ok.

4) The request will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

5) The alleged difficulty is self-created.

The benefit to the applicant is not outweighed by the potential detriment to health, safety and welfare of the community.

Now, upon motion duly made by Dan Sheridan and seconded by Lorraine Lefevé, it is resolved that the ZBA does hereby approve a variance to the PUD for 2 additional boathouses which are to be used for residential purposes only. It is hereby determined that the action to be taken is consistent with the Town of Bolton Local Waterfront Revitalization Program policies and standards. Jason Saris and Jim Senese opposed. **All others in favor. Motion Carried.**

The meeting was adjourned at 7:21PM.

Minutes respectfully submitted by Kate Persons